

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish a recurrence of disability on February 2, 2013 caused by an October 26, 2008 employment injury.

On appeal counsel asserts that the medical evidence establishes disability due to reflex sympathetic dystrophy (RSD), an accepted condition, and that OWCP used an incorrect legal standard in denying appellant's claim.

FACTUAL HISTORY

This case has previously been before the Board. In a March 13, 2015 decision, the Board affirmed a February 6, 2014 OWCP decision finding that appellant had not submitted sufficient evidence to establish a recurrence of disability commencing February 2, 2013 causally related to the October 26, 2008 employment injury. The Board noted that neither of appellant's physicians, Dr. Mary Alice Kelly, a Board-certified internist, nor Dr. Lorianne E. Avino, an osteopath, specifically related appellant's claimed February 2, 2013 recurrence of disability to the accepted conditions of left ankle fracture, deep vein thrombosis (DVT) or RSD.³ The findings of facts and conclusions of the previous Board decision are incorporated herein by reference.

Following the Board's March 13, 2015 decision, on May 26, 2015 appellant, through counsel, requested reconsideration. Medical evidence received by OWCP after its February 6, 2014 decision included a June 2, 2014 report in which Dr. Avino advised that she had been treating appellant's left leg RSD symptoms of erythema, edema, allodynia, and hyperalgesia with medication but that appellant had shown no signs of improvement. She opined that, due to the severity of his RSD symptoms, appellant was disabled from performing the duties of truck driver, noting that he had great difficulty standing and walking for long periods of time, and that pushing and pulling loaded mail carts would worsen his RSD. Dr. Avino submitted monthly reports describing physical examination findings. She diagnosed chronic pain syndrome

³ Docket No. 14-74 (issued March 13, 2015). On October 26, 2008 appellant, a tractor/trailer operator, fractured of his left ankle when he fell at work. He stopped work that day and on October 31, 2008 underwent open reduction internal fixation of a left ankle trimalleolar fracture. The claim was accepted for left ankle fracture and appellant received wage-loss compensation. On January 18, 2009 appellant was hospitalized with a left leg DVT. OWCP accepted this condition. Appellant returned to full duty on May 11, 2009. On September 23, 2010 he was granted a schedule award for 25 percent left leg impairment. On February 3, 2011 appellant filed a recurrence claim for an October 26, 2010 work stoppage. OWCP accepted the October 26, 2010 recurrence. On March 10, 2011 appellant returned to full duty. In a May 5, 2011 decision, OWCP denied his claim for compensation due to the October 26, 2010 recurrence because schedule award compensation had not yet expired. On February 8, 2012 appellant was granted a schedule award for an additional two percent left leg impairment. On February 5, 2013 he filed a recurrence claim, stating that he stopped work on February 2, 2013 due to the October 26, 2008 work injury. Appellant did not return to work. He submitted medical evidence to support his recurrence claim. A functional capacity evaluation (FCE) was performed on March 4, 2013. It indicated that appellant could not perform the physical demands required of a truck driver/unloader but that he had the ability to perform sedentary work. In May 14 and August 28, 2013 decisions, OWCP denied appellant's recurrence claim. On February 6, 2014 it accepted RSD of the left leg. In a separate February 6, 2014 decision, OWCP denied the recurrence claim because the evidence did not sufficiently to support a causal relationship between the claimed recurrence and the accepted conditions. Appellant then appealed to the Board.

secondary to RSD caused by an ankle fracture, joint disorder of the ankle or foot, and neuritis or radiculitis of the thoracic or lumbosacral spine.

In a May 14, 2015 letter, Dr. Avino reported that appellant suffered from severe ankle pain, swelling, erythema, edema, allodynia, and hyperalgesia as a result of RSD. She noted that appellant was initially able to return to work full duty as a tractor trailer driver in March 2011, which was after an accepted October 26, 2010 recurrence of disability,⁴ but that he was forced to stop working in February 2013 because his RSD worsened to the point where he could no longer work as a truck driver. Dr. Avino opined that the ankle fracture caused the RSD, and the RSD caused his disability from work. She indicated that she had reviewed appellant's job description as a postal service truck driver and advised that his RSD clearly disabled him from this position, noting that the strenuous duties of the position, such as pushing and pulling carts of mail up and down ramps, would certainly cause severe pain and exacerbate the RSD.

In a merit decision dated August 17, 2015, OWCP denied appellant's recurrence claim. It found the medical evidence insufficient because it did not contain an explanation of how appellant could perform his work duties until the claimed February 2, 2013 recurrence of disability, but could not perform these duties after that date.

Appellant, through counsel, again requested reconsideration on October 2, 2015. Counsel noted that an FCE done on March 4, 2013 demonstrated that appellant could not perform the duties of a truck driver. He attached a copy of the FCE which advised that appellant could not perform the physical demands of a postal service truck driver, but could perform sedentary work.⁵

On September 7, 2015 Dr. Avino again described appellant's physical condition which, she opined, was due to RSD. She described the FCE findings and advised that she endorsed the conclusions described therein. Dr. Avino again opined that appellant stopped work on February 2, 2013 because the RSD worsened to the point that he could no longer perform the job duties of a truck driver. She concluded that appellant's disability continued to present. Dr. Avino continued to submit treatment notes describing physical examination findings and diagnoses.

In a merit decision dated February 3, 2016, OWCP denied appellant's recurrence claim. It found the medical evidence insufficient because it did not establish the basis for the February 2, 2013 recurrence, noting that the evidence did not explain what occurred on February 2, 2013 that would render appellant completely disabled from work. The decision continued that the FCE indicated that appellant could perform sedentary duty which showed that appellant could have continued to work. OWCP concluded that the evidence did not show a spontaneous change in the medical condition which resulted from the previous illness or that the recurrence was due to a withdrawal of appellant's light-duty assignment.

⁴ *Id.*

⁵ *Id.*

LEGAL PRECEDENT

A recurrence of disability means “an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.”⁶ An individual person who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable, and probative evidence that the disability for which he or she claims compensation is causally related to the accepted injury. This burden of proof requires that an employee furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical reasoning.⁷ Where no such rationale is present, medical evidence is of diminished probative value.⁸

ANALYSIS

The Board finds this case is not in posture for decision. OWCP initially accepted that appellant sustained a left ankle fracture. In February 2009 it expanded the claim to include DVT. On February 5, 2013 appellant filed a recurrence claim, stating that he stopped work on February 2, 2013 due to the October 26, 2008 employment injury. It was not until February 6, 2014, one year later, that OWCP also accepted RSD.

In reports dated May 14 and September 7, 2015, Dr. Avino described appellant’s physical condition, noting that the left leg RSD caused severe ankle pain, swelling erythema, edema, allodynia, and hyperalgesia. She clearly opined that the accepted October 26, 2008 left ankle fracture caused the RSD which worsened over years such that beginning on February 2, 2013 appellant could no longer perform the duties of tractor/trailer operator. Dr. Avino also indicated that she agreed with the findings of a March 4, 2013 FCE that demonstrated that appellant could not perform truck driver duties but could only perform sedentary work.

The Board finds that these reports from Dr. Avino provide sufficient rationale to warrant further development on the recurrence issue. While they lack detailed medical rationale sufficient to discharge appellant’s burden of proof that his current diagnoses and condition rendered him totally disabled beginning on February 2, 2013, OWCP later accepted RSD as employment related on February 6, 2014. Dr. Avino has clearly explained that the accepted October 26, 2008 left ankle fracture led to RSD which worsened on February 2, 2013 to the degree that appellant could no longer perform his truck driver duties.

It is well established that proceedings under FECA are not adversarial in nature, and while the claimant has the burden to establish entitlement to compensation, OWCP shares

⁶ 20 C.F.R. § 10.5(x); R.S., 58 ECAB 362 (2007).

⁷ S.S, 59 ECAB 315 (2008).

⁸ See *Ronald C. Hand*, 49 ECAB 113 (1997).

responsibility in the development of the evidence.⁹ The case shall therefore be remanded to OWCP. On remand, OWCP shall refer appellant, a statement of accepted facts that includes all accepted conditions, a position description, and the medical evidence of record to an appropriate Board-certified specialist for an examination, diagnosis, and a rationalized opinion regarding whether appellant was totally disabled for any period on or after February 2, 2013 due to the accepted conditions of left ankle fracture, DVT, and RSD. After this and such further development deemed necessary, OWCP shall issue a *de novo* decision.¹⁰

CONCLUSION

The Board finds this case is not in posture for decision regarding whether appellant established a recurrence of disability on February 2, 2013.

ORDER

IT IS HEREBY ORDERED THAT the February 3, 2016 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded to OWCP for proceedings consistent with this opinion of the Board.

Issued: July 26, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

⁹ See *Jimmy A. Hammons*, 51 ECAB 219 (1999); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ The Board notes that contrary to the inference in the February 3, 2016 OWCP decision, appellant was not working limited, sedentary duty when he stopped work on February 2, 2013.